UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

[redacted]
TESSA G.,

Plaintiff,

v.

XAVIER BECERRA, Secretary,
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendant.

CIVIL ACTION

FILE NO: 1:23-CV-02665-LMM-RGV

Plaintiff's Objection to Magistrate Judge's August 17, 2023 Order

Plaintiff's Objection to Magistrate Judge Vineyard's Order Issued August 17, 2023, seeking review and reversal by presiding U.S. District Court Judge Leigh Martin May, and supporting Memorandum

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PRELIMINARY STATEMENT

The enclosed Memorandum is being filed as an Objection ("Objection") to the August 17, 2023 Order Denying Plaintiff's Motion to file and proceed with this Complaint and submissions anonymously using the pseudonym assigned by the Equal Employment Opportunity Commission ("Order"). This Objection to the August 17, 2023 Order is filed pursuant to Federal Rules of Civil Procedure (FRCP) 72(a).[1]

OVERVIEW OF ARGUMENT

The Magistrate's Order should be reversed because the court in the Order did not apply the correct legal standard set forth by the Eleventh Circuit, as clarified in Doe v. Neverson.[2] As described in this dual Objection and Memorandum, the Order disregarded the balance of the numerous circumstances set forth by the Plaintiff justifying the unusual permission to proceed anonymously where, in this case, the Plaintiff's substantial privacy interests case outweigh the general presumption of full, "open" access to parties' identities.

Similar to what the trial court did in Neverson, as further described in the following, in this case the court in its August 17, 2023 Order essentially chalked up the well-established, *severe* social stigma surrounding epilepsy—which disability advocates and stigma experts have characterized as even more stigmatizing than mental illness[3]—to little more than "embarrassment" from revealing one's medical information. In summary, the August Order dismissed the well-established, substantial social stigma surrounding epilepsy, as well as the

[1] Plaintiff received a copy of the Order on August 21, 2023. *SEE* Exhibit A, Declaration of Pamela S. Gillis Gilbertz.
[2] 820 Fed. Appx. 984 (2020)
[3] Id.

Plaintiff's extensive difficulty dealing with such stigma both throughout her life as well as the with the circumstances leading up to this Complaint.[4]

The court in its August Order likewise moreover failed to properly consider, as required by the Eleventh Circuit, the *totality of* the circumstances, as documented not only in facts set forth by the Plaintiff in her June 14, 2023 Complaint as well as Motion to proceed pseudonymously. The circumstances also include the facts set forth in the EEOC proceedings that preceded the instant Complaint, especially those contained in the EEOC's published appellate decision.[5]

In this case, the numerous factors taken together clearly "move the needle" toward justifying that the Plaintiff be granted permission to maintain anonymity. The August Order further disregarded that not only is this Complaint against the government, and would be compelled to disclose sensitive information of the "utmost privacy" if not granted anonymity, but unlike in most cases where a party requests permission to proceed using a pseudonym, this Complaint has already been (extensively) litigated before the EEOC, in which the EEOC and Complainant/Plaintiff not only maintained the Plaintiff's anonymity and privacy consistently. But unlike in most federal cases, the instant Complaint was preceded by a published appellate decision that named the instant Defendant as being liable for discrimination and retaliation at issue in the instant Complaint, while it referred to the Plaintiff (Complainant) by a randomly-assigned pseudonym ("Tessa G.").[6] Thus, the general factors of a defendant having a right to know who is suing them, and potential disadvantage to a defendant—in this case an extremely powerful and prominent federal agency—that could result from a Plaintiff proceeding under not

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[4] *Note*: Disability advocates and stigma and discrimination law experts have suggested that epilepsy is *even more stigmatizing* than mental illness. *See*, e.g., note 18 below.
[5] Id.
[6] Id.

just any pseudonym, but the same pseudonym used in litigation that led up to the instant Complaint, are simply not applicable in considering the Plaintiff's request to continue pseudonymously this Complaint. The court overlooked multiple factors in its August Order that, in totality, justify the exceptional permission to proceed anonymously in the instant case.

As further explicated in this Memorandum of Objection, the presiding U.S. District Court Judge should reject and vacate the Magistrate Judge's August 17, 2023 Order, and should grant the Plaintiff permission to proceed with this Complaint under a pseudonym as well as order that all other such submissions in this case redact the Plaintiff's name and specific PII.

ARGUMENT

I. RELEVANT FACTUAL BACKGROUND ON THE HARM CAUSED BY EPILEPSY DISCLOSURE

A. Facts surrounding Plaintiff's prima facie case of discrimination and retaliation

As Plaintiff pleaded in her original Complaint filed on June 14, 2023—and as set forth from the outset of her EEOC Complaint and cited in the EEOC's decisions[7]—the events leading to Plaintiff's discriminatory termination and retaliation thereafter[8] began immediately after the Plaintiff disclosed her epilepsy to her manager.[9] While Plaintiff was on medical leave for her epilepsy, within a few weeks of Plaintiff disclosing her epilepsy to her supervisor in May 2014, the Defendant Agency hired Plaintiff's (first) replacement.[10] Immediately after Plaintiff disclosed her epilepsy, and again after she returned from her medical leave, several managers

[7] See the EEOC's appellate decision, Tessa G. v. HHS, EEOC Appeal No.
[8] And including unlawful discussion i.e. disclosure of her epilepsy to other individuals to whom Plaintiff had not disclosed her epilepsy, in further violation of the Rehabilitation Act.
[9] Note the Plaintiff's failure-to-accommodate claim is secondary to her primary claims of discriminatory termination and disparate treatment.
[10] See June 14, 2023 Complaint; also *see* EEOC Appeal No. 2020004613 (Aug. 29. 2022).

and staff made disparaging comments to Plaintiff regarding her epilepsy, invoking common misconceptions and stigma around epilepsy. For example, one project manager had asked the Plaintiff immediately upon finding out about her epilepsy whether Plaintiff would be capable of caring for herself in light of her seizures. Another manager told Plaintiff shortly after she (Plaintiff) returned from medical leave, that "People who work at the CDC need to have cars and drive."[11]

These facts, among others, have not only been pleaded in Plaintiff's Complaint filed June 14, 2023. These facts were previously forth in Plaintiff's informal then formal EEO Complaints commenced in November 2014, and February 2015, respectfully.[12] Thereafter, these facts were reiterated in her March 2016 Memorandum submitted in support of her request that the EEOC issue a default judgment in her favor and reiterated in multiple filings thereafter. In the course of numerous filings to AJs, and thereafter the Office of Federal Operations of the EEOC, including the Defendant's responses to the Complainant's Motion for Summary Judgment all the way through the Complainant's appeal to the OFO regarding equitable and compensatory relief awarded, the Defendant conceded the underlying facts setting forth the discrimination that Plaintiff alleged, including (but not only) that the Plaintiff's (non-disabled) replacement was hired very shortly after Plaintiff disclosed her epilepsy and that Plaintiff was removed from her project role exactly one month after being caused to train her replacement; that numerous managers and staff discussed Plaintiff's epilepsy with each other and made disparaging comments regarding Plaintiff's epilepsy to her; and that Plaintiff was treated more harshly than

[11] *See* June 2023 Complaint; also see Complainant's/Plaintiff's March 2016 *Memorandum in Support of Motion for Sanction of Default Judgment* pp. 25-43.

[12] These various submissions and filings as submitted by both the Plaintiff and the Agency/Defendant (with Complainant's name and limited PII redacted) are posted and available on a public Google drive at:

similarly-situated workers whose projects were delayed, had communication difficulties, and/or exhibited performance problems.[13]

As set forth in her Complaint, after the Plaintiff's (abrupt) discriminatory discharge, the Defendant also subjected the Plaintiff to retaliation that (at least) consisted of the Plaintiff's (former) supervisor informing an influential member of Plaintiff's specialized field about Plaintiff's EEO activity. After finding out about Plaintiff's EEO activity, that contact and stopped assisting Plaintiff with her job-search efforts and essentially broke off ties with Plaintiff.[14]

From the time the parties in the instant Complaint went before an EEOC AJ in late 2015 through the appeals process before the OFO between 2020 and 2022, including numerous briefs and filings by both parties, the Defendant did not challenge the substance or merits of Plaintiff's discrimination and/or retaliation claims or the underlying rulings by the AJ and then the OFO holding that the Defendant discriminated and retaliated against the Plaintiff/Complainant. This was despite the Plaintiff/Complainant extensively setting forth her prima facie cases, and even (partial) evidence of pretext by the Agency/Defendant. By contrast, the Defendant aggressively and extensively disputed Plaintiff's claims of her entitlement to equitable and other relief following judgment on its liability for discrimination and retaliation between 2020 and 2022.

Although a federal court is required to hear this Complaint *de novo*, it should nonetheless note at the outset, in evaluating Plaintiff's claims regarding actual harm suffered due to disclosure of her epilepsy for the specific purposes of assessing her right to anonymity in this Complaint, that the facts set forth herein are more than "mere speculation" that such harm

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[13] *See* Complainant's/Plaintiff's March 2016 *Memorandum in Support of Motion for Sanction of Default Judgment* pp. 25-43. *Also see (*Defendant's) *Agency's Opposition to Complainant's Motion for Default Judgment* (March 2016), both filings available at: https://drive.google.com/drive/folders/1-tr2ka2HJkU4o7Oz-gUBDdqXBP1OQn-M

[14] *See* June 2023 Complaint, and Tessa G. v. Dept. of Health and Human Services, EEOC Appeal No. 2020004613 (Aug. 29. 2022).

resulted from disclosure of Plaintiff's epilepsy. In turn, if disclosure of Plaintiff's epilepsy to just one supervisor and select co-workers resulted in such severe consequences, then surely a (very) public disclosure of Plaintiff's epilepsy, concomitant with her Complaint filing, that anyone in the world with an Internet connection can ascertain, will almost certainly lead to even-more severe harm. Such harm is not limited to professional consequences, but severe social stigma in all domains of the Plaintiff's life. This is above and beyond the physical manifestations of severe emotional distress, which the Plaintiff throughout her EEOC proceedings further described she has suffered owing significantly to shame and humiliation.

The circumstances that followed the Plaintiff's epilepsy disclosure[15] are not mere pleadings and allegations at this juncture. As further described below, the stigma surrounding epilepsy in particular is well-established and documented to be severe through extensive empirical research.

B. Overview of empirical research and legal history surrounding epilepsy stigma and discrimination

As Plaintiff cited in her June 14, 2023 Motion to proceed pseudonymously, epilepsy has long been and remains among the most highly-stigmatized diseases and disabilities. This is not simply an assertion by the Plaintiff as the court suggested in its August Order, but a fact that is well-established and documented extensively in empirical research and history, including legal history.

Among noted disability advocates and/or experts of discrimination law as well as stigma is Samuel Bagenstos, who is currently the General Counsel for the Defendant Xavier Becerra

[15] Coupled with the circumstances Plaintiff has faced throughout her life surrounding repeated harm on the occasions when her epilepsy status and/or incidents of seizures became known to others prior to her employment with Defendant Agency, some of which the Plaintiff and/or witnesses described in testimony and/or submissions to the record during the pendency of her EEOC proceedings.

and HHS. Prof. Bagenstos recounted[16] that the stigma surrounding epilepsy goes back to ancient times when people associated epilepsy with possession by demons, but that such stigma lingers to this day.[17] In describing the stigma around epilepsy, Prof. Bagenstos further cited to testimony of renowned disability-rights advocate Arlene Mayerson, before Congress prior to its passage of the American's with Disabilities Act ("ADA") referring bluntly to how severe epilepsy stigma is: "[T]hat personnel directors would prefer to hire a former prison inmate or mental hospital patient [rather] than an epileptic."[18] Whereas many have noted that epilepsy is often mistaken for mental illness,[19] and while mental illness can also be highly stigmatized, empirical research and history indicate that epilepsy is *even more* socially stigmatized than mental illness—as Arlene Mayerson suggested in her testimony cited above.[20]

Unlike individuals with mental illness in general, people with epilepsy in particular for well over a century have been (and remain) targets of specific laws in the U.S. and beyond. From the early Twentieth Century through the 1970s, the majority of U.S. states subjected with people with epilepsy to mandatory institutionalization and/or forcible sterilization. The Supreme Court in 1927 upheld state laws—enacted by the majority of states—subjecting people with epilepsy and/or "feeble-mindedness" to forcible sterilization and/or institutionalization. Such laws were not repealed in all states until the 1980s.[21] Similarly, several states maintained laws on the books

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[16] In his capacity as law professor, prior to assuming the role of HHS General Counsel. *Note* that Plaintiff cited Prof. Bagenstos' references to epilepsy stigma in her March 2016 Memorandum in Support of Default Judgment, long before Prof. Bagenstos assumed his current position. *See* Complainant's/Plaintiff's March 2016 *Memorandum in Support of Motion for Sanction of Default Judgment* p.40. Available at: https://drive.google.com/drive/folders/1-tr2ka2HJkU4o7Oz-gUBDdqXBP1OOn-M

[17] Samuel Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397, 471, 502 (2000)

[18] S. Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397, 471, 502 (2000), citing Americans with Disabilities Act: Hearing Before the House Committee on Small Business, 101st Cong. 126–39 (1990) statement of Arlene Mayerson) (collecting studies); H.R. Rep. No. 101-485, pt. 2, at 71 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 353.

[19] See, e.g., Katrina. Luffy, *On the Road Again: Revisiting State Laws That Unreasonably Restrict Drivers with Epilepsy and Burden the Physicians Who Treat Them*, 51 Loy. U. Chi. L. J. 1127 (2021).

[20] *See* note 18.

[21] Id.

until the 1980s that furthermore *expressly prohibited* marriage and/or employment among/by people with epilepsy, and/or expressly permitted the exclusion of people with epilepsy from public venues such as, e.g., restaurants[22]—even years after the Civil Rights Era and passage of the Civil Rights Act of 1965.

Although the most extreme laws targeting people with epilepsy for mistreatment have been repealed,[23] and despite the passage of anti-discrimination laws such as the Rehabilitation Act and the ADA, as experts and other scholars have noted, the widespread stigma surrounding epilepsy has persisted. For example, in a 2009 study in Atlanta of a simulation comparing the treatment by workplace managers toward employees with epileptic family members as compared to workers with asthmatic family members (as opposed to the workers themselves), researchers found that social animus toward people with epilepsy is so strong that even individuals known to be *associated with* an epileptic were significantly more likely to experience employment discipline or an adverse action at work than employees whose family members had other physical ailments, when controlling for such factors as objective employee performance.[24] It is clear that the stigma surrounding epilepsy is severe and persistent.

In short, the above extensively sets forth the very severe stigma faced by people with epilepsy that justifies the court granting the Plaintiff in this case to maintain her anonymity in this Complaint—especially coupled with the Plaintiff's personal experience and the various other factors.

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[22] *See* Id.

[23] Except for laws specifically singling out and targeting people with epilepsy for driving restrictions—rather than more generally targeting people with a variety of medical conditions and/or other groups (e.g. the youngest drivers) who become incapacitated while driving and/or cause accidents and road deaths at much higher rates than people with epilepsy overall.

[24] C. Parfene, et al. *Epilepsy stigma and stigma by association in the workplace*. 15 J. EPILEPSY & BEHAVIOR 461 (2009).

II. The Magistrate Judge did not correctly apply the relevant legal analysis to the totality of the various specific circumstances the Plaintiff set forth supporting her request to proceed under pseudonym

The court erred in its August Order denying the Plaintiff permission to proceed with this Complaint using a pseudonym, based on an application of the legal factors as clarified by the Eleventh Circuit to the *totality of* the circumstances in the instant case.

A. The law on use of pseudonyms in legal proceedings

The public's right of access to judicial records is well established. Federal Rule of Civil Procedure 10(a) requires "'every pleading' in federal court" to "'name all the parties.'" Plaintiff B v. Francis, 631 F.3d 1310 (11th Cir. 2011). However, the public's right of access is not absolute and "may be overcome by a showing of good cause, which requires balancing the asserted right of access against the other party's interest in keeping the information confidential." Romero v. Drummond Co., Inc., 480 F.3d 1234, 1246 (11th Cir. 2007). Given the strong presumption of openness in judicial proceedings, courts permit plaintiffs to proceed under pseudonyms in "exceptional case[s]." Doe v. Frank, 951 F.2d 320 at 323 (11th Cir. 1992).

The Eleventh Circuit has stated that, "The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings.'" Id. (*quoting* Doe v. Stegal 653 F.2d 180 at 186 (5th Cir. 1981). Whether a party's right to privacy outweighs the presumption of openness is a "totality-of-the-circumstances question." Doe v. Neverson 820 Fed. Appx. 984 at 986 (11th Cir. 2020) (*citing* In re Chiquita Brands Int'l Inc., 965 F.3d 1238 (11th Cir. 2020).

The Eleventh Circuit has moreover set forth that the *first step* of this balancing test is to weigh whether the Plaintiff seeking anonymity meets any of the following three factors: (1) is

challenging government activity; (2) would be compelled, absent anonymity, to disclose information of the utmost intimacy; or (3) would be compelled, absent anonymity, to admit an intent to engage in illegal conduct and thus risk criminal prosecution." Doe v. Neverson 820 Fed. Appx. 984 (11th Cir. 2020) (*emphasis added*). The Eleventh Circuit further explained that the "information of utmost intimacy" standard applies to cases in which "the social stigma attached to the plaintiff's disclosure" was so extreme as to overcome "the presumption of openness in judicial proceedings." *Frank*, 951 F.2d at 324 (enumerating mental illness, sexual orientation, and transgender identity as examples). However, the Eleventh Circuit reiterated that "a court "should carefully review *all* the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff's identity should yield to the plaintiff's privacy concerns." Neverson at 986 (*quoting* Francis 631 F.3d at 1316,).

The Eleventh Circuit has moreover provided that the scale tips in favor of a plaintiff seeking anonymity "only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, *or* where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." Frank, 951 F.2d at 324 (*emphasis added*).

While the Eleventh Circuit has emphasized that courts should weigh a totality of circumstances and that the three aforementioned factors of the preliminary balancing test are just a starting point, the Eleventh Circuit and other circuits have listed several additional factors courts should consider. Other such factors include whether the plaintiff proceeding with a pseudonym would pose a threat of fundamental unfairness to the defendant (e.g., Doe v. Sheely, 11th Cir, 2019); whether the party is a minor (Id); whether the plaintiff's identity has been kept confidential thus far (e.g., Sealed Plaintiff v. Sealed Defendant #1, 537 F.3d 185, 2d Cir. 2008);

and whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity (Id.)

In Frank, where the primary claim was termination based on failure to accommodate,[25] the court held that plaintiff did not allege that he would suffer more than "embarrassment", and did not regard the plaintiff's alcohol disorder as either being mental illness, or being sufficiently stigmatizing as compared to mental illness. Id. In comparison, in 2012 the district court decision cited by this court in its August Order,[26] citing Frank, stated that a plaintiff's ADHD was not sufficiently stigmatizing to overcome the high bar for demonstrating that the plaintiff's privacy interest outweigh the presumption of openness. In arriving at that conclusion, the district court Miami expressly refuted that plaintiff's stigma was comparable to HIV, the diagnosis of a plaintiff in a case who was permitted to proceed anonymously. In re Doe v. Univ. of Miami, U.S. Dist. LEXIS 200135 (2012), citing Doe v. Dekalb County School Dist., 145 F.3d 1441 (11th Cir. 1998).

In DeKalb County, where the court gave no reason other than "to protect his privacy," it could be inferred that the court accepted the (commonly acknowledged) high-level of social stigma surrounding HIV on its face. And though the nature of another prominent case arising in the Eleventh Circuit, Olmstead,[27] involved a different aspect of discrimination by the

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[25] In contrast to Frank, whereas the instant Complaint also includes a (secondary) failure-to-accommodate claim, the primary claim in the instant Complaint is discriminatory termination and disparate treatment that specifically followed the Plaintiff's *disclosure* of her epilepsy, and also includes an additional (secondary) claim of unlawful *disclosure* of Plaintiff's private medical information. The instant Complaint moreover includes a retaliation claim involving the *disclosure* of Plaintiff's EEO activity to others in Plaintiff's professional field. *See* June 2023 Complaint and the EEOC's appellate decision Tessa G. v. HHS. Unlike in Frank, where the complaint was not itself based on disclosures, the instant Plaintiff is thus seeking to avoid such further (very) public disclosures by proceeding with this Complaint under her name.
ALSO NOTE: Frank was decided in 1992, before the Internet Age, where court records were generally harder to locate by the general public than a basic Internet search via, e.g., Google.

[26] In re Doe v. Univ. of Miami, U.S. Dist. LEXIS 200135 (2012)

[27] *See* L.C. v. Olmstead, 138 F.3d 893 (11th Cir. 1998), and Olmstead et al v. L.C., et al 527 U.S. 581 (1999).

government, of segregating disabled individuals in institutions, rather than disability discrimination in employment (also by the government). In Olmstead, like in Dekalb County, the Eleventh Circuit, along with the Supreme Court, maintained the anonymity of the (underlying) plaintiffs seemingly because the court appeared to accept outright that maintaining the privacy of the plaintiffs whose developmental and/or intellectual disabilities were central to their complaint was sufficiently important to overcome the presumption of openness in litigation.

B. The totality of factual circumstances in this case support Plaintiff's request to maintain her anonymity in this Complaint

In the instant Complaint, the factual circumstances in their totality, when weighed in the balancing test set forth by the Eleventh Circuit, support that the Plaintiff's privacy interests in maintaining her anonymity in this case outweigh the strong general presumption of openness in litigation. These go well beyond the first of the three preliminary factors set forth by the Eleventh Circuit, that the instant Plaintiff is challenging governmental activity.[28] In this case, at the initial inquiry into whether a plaintiff satisfies *any* of three criteria, to be examined in combination with all the circumstances, the instant Plaintiff meets two of the three factors. The only one of the three factors here that is not applicable to this Plaintiff is the third; the Plaintiff would not be compelled to admit any intent to engage in illegal conduct that would put her at risk of criminal prosecution. *See* Doe v. Neverson 820 Fed. Appx. 984 (11th Cir. 2020).

[28] *Note* in the introduction of her June 2023 Complaint, the Plaintiff framed her Complaint not only in terms of her personal injury, but of the broader violation by HHS of failing to be "a model employer for those with disabilities as required by federal law," and further cited audits finding systemic-level disadvantage among disabled workers at the Defendant Agency. *See* June 14, 2023 Complaint at 1, 22.

Independent of any of the multiple additional relevant circumstances, the second of the three initial factors is clearly the most salient. By proceeding with her name rather than anonymously, the Plaintiff would clearly and necessarily be compelled to disclose information of the utmost intimacy—which the Eleventh Circuit has defined to include mental illness and/or extreme social stigma, and which would clearly encompass epilepsy. While the court in the August Order acknowledged that the Plaintiff was attempting to argue that her epilepsy and the severe stigma surrounding it would be considered information that utmost private, the court then erred by chalking up Plaintiff's concerns surrounding epilepsy stigma to mere "embarrassment". However, even the August Order did not dispute that it would be effectively impossible to protect (public) disclosure of the Plaintiff's (highly-stigmatized) epilepsy status without her proceeding anonymously in this Complaint.

As noted previously, in dismissing that the disclosure of the Plaintiff's epilepsy would be sufficiently stigmatizing, the court in its August Order cited the earlier district court decision In re Doe v. Univ. of Miami, U.S. Dist. LEXIS 200135 (2012) which rejected that revelation of a plaintiff's ADHD and attendant behavioral health concerns were sufficiently stigmatizing Id. *citing* Doe v. Blue Cross & Blue Shield United of Wisconsin, 112 F.3d 869, 872 (7th Cir. 1997). Irrespective of the soundness of that decision, the court in Miami specifically rejected that stigma of ADHD can be compared to HIV. Id at 6.

As relevant to the instant case, however, especially in light of the aforementioned evidence and history of severe epilepsy stigma, scholars and stigma experts have *expressly* analogized the stigma surrounding epilepsy to that of HIV/AIDS (and vice versa).[29] The court's

[29] See, e.g., *Prejudice towards chronic diseases: Comparison among epilepsy, AIDS and diabetes*, 16 Seizure (2007) at 320 (*finding* that the median prejudice score on a scale of 0-10 for the three conditions, was, respectively, 9 for HIV/AIDS, 7 for epilepsy, and 2.5 for diabetes).

reasoning in its Miami decision (2012), especially when coupled with the aforementioned empirical and historical evidence, further supports, rather than undermines, the instant Plaintiff's justification for being granted anonymity in this Complaint.

Similarly, as alluded to in the aforementioned reference to the Buck v. Bell decision and the laws targeting epileptics, the courts have on the one hand historically treated as similar in "undesirability" people with epilepsy and those who are developmentally and/or intellectually disabled (or, "feeble-minded" as the Court referred to them in Buck v. Bell). Later, the Eleventh Circuit and the Supreme Court in their Olmstead decisions, even though they did not discuss this, apparently accepted that plaintiffs who are developmentally and/or intellectually disabled should be afforded anonymity in their complaints of discrimination against the government. Especially given the persistent severe stigma surrounding epilepsy and the way in which the courts and law earlier treated people with epilepsy as similarly undesirable and comparably targeted for institutionalization and/or sterilization, those court decisions by analogy further support the Plaintiff's request, at the outset of this Complaint, that because her epilepsy is central to this Complaint she should likewise be granted anonymity.

The Plaintiff has set forth extensively, in citing significant empirical research and legal history, that the stigma surrounding epilepsy is severe. If the court would deny Plaintiff's request to proceed anonymously given the substantial evidence regarding epilepsy stigma—and especially given the particular circumstances and history surrounding the Plaintiff's Complaint—the court would significantly depart from and undermine Eleventh Circuit precedent holding that substantial social stigma of one's private information, particularly concerning conditions ranging from mental illness to HIV, can justify an exception to the presumption of the openness of litigation.

Although the Plaintiff's public disclosure of her (highly-stigmatized) epilepsy that would necessarily occur by proceeding in the instant Complaint without anonymity arguably is sufficient to warrant the court granting her permission to proceed anonymously, the totality of the numerous additional circumstances that the court must consider further justify anonymity. For example, while the court in its August Order (p. 5) suggested that fairness to the defendant and a defendant's right to know who its accusers are important factors, the court in its August order overlooked that those factors are not applicable to the instant Complaint given the history of the extensive litigation of this Complaint at the EEOC. As documented, the Defendant-Agency knows the identify of the Complainant to whom the pseudonym "Tessa G" refers, as that was alias (randomly) assigned to the Plaintiff by the EEOC, and the Defendant has already engaged in litigation with the instant Complainant under that pseudonym. Similarly, (further) embarrassment to the Defendant is similarly not relevant in this Complaint because the EEOC already published an appellate decision in which it held the Defendant-Agency liable disability discrimination and retaliation against this Plaintiff.

As a related factor, that the Plaintiff has not only guarded the confidentiality of her epilepsy from even most of her friends and acquaintances throughout her entire life, that the instant Plaintiff and Defendant have been engaged in protracted litigation where the Plaintiff's anonymity has consistently been maintained further warrants the court extending that to the pendency of the instant Complaint. Similarly, that the Plaintiff specifically requested and was granted the extra step by the EEOC of redacting the Plaintiff's limited PII from its published appellate decision—even though the EEOC generally publishes its decisions using pseudonyms and maintains the confidentiality of complainants—further demonstrates the substantial fear the

Plaintiff has continuously had regarding the potential disclosure of her identity in connection to this Complaint.[30]

The Plaintiff's fear of disclosing her identity is further substantiated and especially justified in light not just of the severe harm the Plaintiff faced in the events leading up to the Complaint following the (limited) disclosure of her epilepsy, but further in light of the *express* and direct retaliation and harm the Plaintiff already experienced when others in her specialized field found out about her EEO activity.[31]

CONCLUSION

In summary, the Plaintiff has clearly established under in balancing the factors set forth by the Eleventh Circuit that, due to a combination to the severe stigma surrounding epilepsy and that it would be effectively impossible for Plaintiff to keep her epilepsy status confidential without proceeding with this Complaint anonymous—coupled with the numerous additional circumstances surrounding the history of this Complaint—the Plaintiff's privacy interests outweigh the presumption of openness in litigation and the public's interest in knowing the Plaintiff's identity.

The court erred when it denied in its August Order Plaintiff's request to be granted permission to proceed in this Complaint anonymously. Based on the foregoing, the presiding U.S. District Court Judge should thus vacate the Magistrate Judge's August 17, 2023 Order

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[30] *See* enclosed Exhibit B, of a letter from Plaintiff's (former) attorney, during the EEOC appeals process, requesting that the EEOC redact the Complainant's limited PII from its published appellate decision.

[31] *See* Tessa G. v. Dept. of Health and Human Services, EEOC Appeal No. 2020004613 (Aug. 29. 2022), where the EEOC cited retaliation the Complainant experienced after her supervisor at Defendant-Agency "brought up the topic of" the Complainant to a law professor in Complainant's field and disclosed the Complainant's EEO activity to the professor; in turn, the professor—who is a prominent member of Plaintiff's professional field, prior longtime mentor to the Plaintiff and who previously had helped the Plaintiff obtain employment—stopped assisting or meeting the Plaintiff, and effectively broke off ties with her.

denying Plaintiff's request to proceed pseudonymously. In its place, the district court should issue an order granting the Plaintiff permission to proceed in this Complainant anonymously and accompanied by directions to the parties on to proceed with filings in a manner to protect the Plaintiff's anonymity in light of the aforementioned.

Respectfully submitted on this 5th Day of September, 2023,

/s/ [redacted] a/k/a Tessa G.

ATTACHMENTS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

[redacted] TESSA G.,	)	
Plaintiff,	)	CIVIL ACTION
v.	)	
	)	FILE NO: 1:23-CV-02665-LMM-RGV
XAVIER BECERRA, Secretary, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,	)	
Defendant.	)	

Declaration of Pamela S. Gillis Gilbertz

I, Pamela S. Gillis Gilbertz, hereby declare the following is true under penalty of perjury.

I personally know the Plaintiff who is referred to by the pseudonym "Tessa G." in the above-captioned Complaint.

The Plaintiff has shared with me that she has been experiencing housing instability, and is thus unable to provide a fixed mailing address of her own where she could consistently receive court documents. The Plaintiff also told me that she has had difficulty consistently accessing documents via the PACER system. Due to these circumstances, I allowed the Plaintiff to list my address with the court to receive mailings sent to her related to this Complaint.

Upon receiving such documents in the mail, I and/or members of my household as soon as practicable electronically scan such documents and email them to the Plaintiff.

On August 21, 2023, I forwarded to the Plaintiff via email an Order from the court dated August 17, 2023. The Plaintiff confirmed with me via email that she received a copy of that Order on August 21, 2023.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that based on my personal knowledge the foregoing is true and correct.

Pamela S. Gillis Gilbertz

Pamela S. Gillis Gilbertz

5 September 2023

Date

Federal Practice Group
Aggressive • Innovative • Global

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Sep. 6, 2022

VIA EMAIL

Office of Federal Operations
Equal Employment Opportunity Commission
ofo.eeoc@eeoc.gov

RE: [redacted] (EEOC App. No. 2020004613) – Request for Redaction of PII in Appeal Decision

To whom it may concern:

[redacted] through counsel, hereby respectfully request that the OFO remove the two references to [redacted] (aka Tessa G's) specific location of residence i[redacted] from pages 3 and 7 of the decision issued on 8/29/22 before it is published, in order to better maintain my client[redacted]'s anonymity. Please note, we are submitting this request via email, in an effort to ensure OFO receives it before said appeal is published. Please note that due to the fact that this matter is effectively closed on the EEOC public portal, we are unable to upload this correspondence thereto.

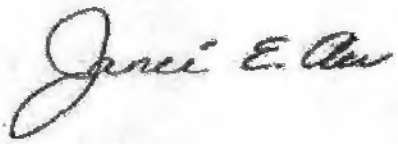
Due to the confidential and sensitive content in the above referenced appeal, particularly Ms. [redacted] health information, Ms.[redacted] is very concerned that people who see the publicly-published decision will be better able to infer her identity from the combination of her distinct background of working in the capacity of a legal analyst at the CDC, as well as her [redacted] residence. In turn, that ability for individuals to ascertain "Tessa G's" true identity as [redacted], along with all the highly confidential and sensitive information at issue in the complaint, will leave my client vulnerable to further harm from that significant loss of privacy. That is counter to the EEOC's policy of maintaining the anonymity of appellants in published decisions. The location of Ms.[redacted] residence and/or her providers as being i[redacted] specifically is neither substantive nor material to the appeal.

Ms.[redacted] also requests that OFO not mail her hard copies of correspondence or decisions regarding her case. This is because Ms.[redacted] does not currently have a stable residence and

has been frequently been moving between temporary residences, and is concerned hard copies mailed may get lost and potentially expose her private information [redacted] is able to access documents regarding her EEOC matter electronically via email. If a hard copy must be sent, Ms. [redacted] respectfully requests it be sent to her undersigned counsel at the address below.

Thank you for your attention to this matter. Please contact our office should you require further information.

Respectfully,



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cc: Keith Eichenholz, Assistant Regional Counsel (yyv0@cdc.gov)
[redacted]